REMARKS/ARGUMENTS

These remarks are made in response to the Office Action of December 13, 2006 (Office Action). As this response is timely filed within the 3-month shortened statutory period, no fee is believed due. However, the Office is expressly authorized to charge any deficiencies or credit any overpayments to Deposit Account No. 50-0951.

Claims 1-23 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,006,197 to d'Eon *et al.*, (hereafter d'Eon), in view of U.S. Patent Application Publication No. 2002/0105911 to Pruthi, *et al.* (hereinafter Pruthi). Claims 1-23 were further rejected under 35 U.S.C. § 103(a) as being unpatentable over non-patent literature "Web Marketing through Oracle iMarketing" by Bellare (Oracle iMarketing), in view of Pruthi.

Claim Amendments

As of this amendment, independent claims 1, 11, 14 have been amended to emphasize that one aspect of the claimed invention is dynamically modifying an initial outbound transmission rate in response to current network capacity and consumer response. In particular, claims 1, 11, and 14 have been amended to recite the electronic content, which can be initially transmitted over the network according to a predetermined outbound transmission flow rate associated with the electronic campaign. Furthermore, claims 1, 11, and 15 have been amended to recite that this outbound transmission flow rate can be modified dynamically according to the effectiveness of the electronic campaign and the available network capacity. Explicit support for such amendments is located throughout the Specification (e.g., page 12, lines 16-24, and page 13, lines 1-18).

Additionally, dependent claims 3 and 16 have also been amended to emphasize that the claimed invention also can dynamically modify the initial (and subsequently determined) outbound transmission rate by analyzing required inbound and outbound

transmission flow rates. In particular, claims 3 and 16 have been amended to recite that the bandwidth of said identified network capacity required for receiving consumer responses and a bandwidth of the identified network capacity required for transmitting electronic content is determined according to the effectiveness of the current electronic campaign. Subsequently, the electronic content can be reformatted to account for changes in the determined bandwidth available for transmitting electronic content. Explicit support for such amendments is located throughout the Specification (e.g., page 9, line 19 through page 10, line 24.

Furthermore, dependent claims 6-8, 15, and 17-23 have been amended to maintain consistency among the claims. No new matter has been added by this amendment.

Aspects of the Claimed Invention

Prior to discussing the cited references, it may be useful to discuss certain aspects of the claimed invention. Independent claims 1, 11, and 14 provide methods and systems for dynamically modifying an electronic campaign based on network activity. As typified in claim 1, the claimed invention can identify an available network capacity for both transmitting electronic content for an electronic campaign and receiving consumer responses in response to the transmitted electronic content. Initially, the electronic content can be transmitted over the network according to a predetermined outbound transmission flow rate. As electronic content is transmitted, the effectiveness of the electronic campaign can be determined by analyzing consumer responses received in response to the transmitted electronic content. The outbound transmission rate for the delivery of electronic content can then be modified dynamically according to the determined effectiveness of the electronic campaign and the identified available network capacity.

In some embodiments, as typified in claims 3 and 16, the outbound transmission rate can be modified by reformatting the electronic content. Such reformatting can be based on the bandwidth of the current network capacity that will be required for receiving aconsumer response and for transmitting electronic content. In other embodiments, as typified in claims 6-7 and 19-21, the electronic content can be transmitted over a plurality of delivery channels, where the outbound transmission flow of each channel can be separately adjusted.

The Claimed Invention Defines Over the Cited Art

As previously discussed, claims 1-23 were rejected as being unpatentable over d'Eon in view of Pruthi and unpatentable over Oracle iMarketing in view of Pruthi. Pruthi discloses a system and method for network providers to monitor data transfers in a network. In particular, Pruthi discloses systems and methods for monitoring communication lines, identifying troubled servers, determining network delays, determining quantity and quality of service, and adjusting routing of packets in response to a network or system analysis. In regard to independent claims 1, 11, and 14, it is stated at pages 3 and 7 of the Office Action that:

> In summary, **independent method claim 1** deals with a method of eliciting a response comprising 4 steps:
>
> (a) identifying the available network capacity for transmitting electronic content (information) and receiving consumer responses (information) to the transmitted information;
>
> (b) transmitting the electronic content (information) over the network according to a predetermined campaign;
>
> (c.) concurrently determining the effectiveness of the campaign by identifying consumer responses to the transmitted electronic content (information); and
>
> (d) dynamically modifying the campaign according to (1) the determined effectivenss of the campaign (or (c.)) and (2) the identified available network capacity (or (a)).

Furthermore, at page 4 of the Office Action it is stated that:

> D'EON et al fairly teaches the claimed invention except for: step (a) and item no. 2 of step (d)

Similarly, on Page 8, it is stated that:

> **ORACLE iMARKETING** fairly teaches the claimed invention except for: (1) step (a) and (2) item (2) of step (d).

On pages 4 (in combination with D'eon) and 8 (in combination with Oracle iMarketing) of the Office Action, it is stated that:

> **PRUTHI et al** is cited to teach a method and apparatus for conducting a communication service for business transaction such as marketing {see [0004], [0012] } comprising the steps of:
>
> (a) identifying the available network capacity for carrying out the communication service,
>
> (d) determining real-time analysis of network capacity to enable quick relocation of resources to provide optimal recommendations of network configurations to meet the service quality requirement in a business transaction.
>
> {see [0004-0005, 0012, and especially 0140], Fig. 22, element (2206) "Recommendations"}.

Therefore, in view of comment (d), the Office Action asserts that Pruthi is cited as disclosing the step of analyzing network resources in order to provide, dynamically, recommendations for network configuration to meet a quality requirement. Applicants agree with this characterization of Pruthi. Therefore, Applicants respectfully submit that in view of this characterization, Pruthi, in combination with d'Eon or Oracle iMarketing, fails to disclose, suggest, or render obvious each and every element of the claimed invention.

In particular, Pruthi fails to disclose, suggest, or render obvious the step of dynamically modifying the outbound transmission flow rate based on at least the

available network capacity. Pruthi only discloses a system and method for monitoring and configuring network resources in order to optimize network traffic and maintain quality of service for content providers. Therefore, content providers operating in a network according to Pruthi can continue the delivery of content at the same level or flow rate without any type of adjustment due to network traffic. Thus, Applicants respectfully submit that Pruthi only discloses that the network configuration, not outbound transmission rates, would be dynamically adjusted to support outbound transmission rates for content providers.

In the Office Action, it is stated that such dynamic changes are diclosed in paragraph [0140] or Pruthi:

> **[0140]** In an exemplary embodiment, the user may select a particular application and a "busy-period" for which she wants to "size" the network resources for a particular quality of service level. Appropriate subroutines in the network monitor then analyze the particular application traffic and extract or estimate "model parameters". Using the mathematical model, and estimates of the parameters, as well as parameters of quality of service (such as packet loss rates, network delays, frame rates, etc.) the model computes statistics such as statistical multiplexing gains, capacity requirements, and buffer allocations and provides the user with optimal recommendations of switch/router configurations, network resources, or server parameters to maximize network utilization while meeting the quality of service requirements. Such recommendations can be computed on a real-time basis where the statistic is updated for every packet or a set of packets belonging to different services and feedback can be provided to network elements along the path for each flow on optimal configurations to enable dynamic resource allocation to meet service quality requirements.

Pruthi, in paragraph [0140] above or elsewhere, fails to disclose or suggest any adjustment, dynamic or otherwise, of outbound transmission rate. In paragraph [0140] and elsewhere in Pruthi, dynamic modification is limited to dynamic resource allocation in the network and network components by the network provider, not to any dynamic modification of the outbound transmission flow rate by the content provider in response

to changes in available resources in the network. For example, Pruthi discloses that in response to detecting network congestion, "a router [can be used] for dynamically adjusting network routing based on...statistics" (See, e,g., Specification para. [0037] and FIG. 4).

Furthermore, the types of recommendations and changes disclosed in Pruthi in paragrpah [0140] and elsewhere are related only to optimization of the network connection to maintain a quality of service level; i.e., how to configure network resources to maintain a content provider's outbound transmission flow at a desired or required rate. For example, paragraph [0140] discloses computing of network usage statistics to determine, dynamically, an optimal configuration of network elements to maintain a fixed quality of service. In other words, determining the optimal network configuration to support a transmission rate of the content provider. In further support of this view, Applicants direct attention to lines 8 and 9 of paragraph [0140]. These portions of Pruthi disclose that quality of service is measured in terms of "packet loss rates, network delays, frame rates," all aspects of network performance. Nowhere does Pruthi disclose adjustment on the part of the content provider, only adjustments by the network provider.

In contrast, the claimed invention provides for the content provider to adjust or modify the outbound transmission rate in response to changes made by the network provider or network traffic. Such a configuration is provided in the claimed invention to allow the content provider to make dynamic changes in the transmission rate in order to account for variations in network performance (See, e.g., Specification, page 7, lines 2-10). Therefore, Pruthi, alone or in combination with d'Eon or Oracle iMarketing, fails to disclose, suggest, or render obvious each and every element in claims 1, 11, and 14.

In regards to claims 3, 13 and 16, the Office Action states:

> As for dep. claim 3 (part of 1 above), which deals with converting certain format of the electronic information (content), this is non-essential to the scope of the claimed invention and is inherently included in the teachings of D'EON et al /PRUTHI et al when changes form digital to electronic and vice versa.

Applicant respectfully disagrees with the rejection above. Applicants respectfully submit that even if format conversion (digital to electronic) does occur when the electronic content is transmitted over the network, one of skill in the art at the time of filing of the application would not consider such a type of conversion as a type of "format" conversion, as used in the art.

Furthermore, on page 10, line 16, the Specification provides:

> The e-marketing message controller 120 further can be configured to vary the bandwidth required for transmission of e-marketing content. In particular, the e-marketing message controller 120 can format convert electronic content representing pictures, video, audio, and other multi-media content, and either increase or decrease the resolution and/or quality of the respective electronic documents. Accordingly, the bandwidth required to transmit the electronic content can be increased or decreased. Thus, for example, under high network traffic conditions, an audio file can be sample rate converted as well as converted from one file format to another to suit the available bandwidth of the system 100.

Applicant respectfully submits that in view of the Specification, one of skill in the art at the time of filing of the present application would have known that a format conversion, as referred to in the Specification, would be limited to those types of format conversions that would increase or decrease the amount of data in the electronic content being transmitted. Such a format conversion would be performed by the content provider to increase the number of messages when bandwidth is limited or fixed (See, e.g., Specification, page 10, lines 22-24). In contrast, a conversion from digital to electronic

format involves no loss of data and is unrelated to the size of messages included in one or more packets transmitted over the network.

Accordingly, Pruthi, separately or in combination with any reference of record, fails to disclose, suggest, or render obvious every feature recited in independent Claims 1, 11, and 14, as amended. Applicants respectfully assert that each of the independent claims, as amended, defines over the prior art. Applicants further respectfully assert that whereas the remaining dependent claims each depend from one of the amended independent claims while reciting additional features, each of the dependent claims likewise defines over the prior art.

CONCLUSION

Applicants believe that this application is now in full condition for allowance, which action is respectfully requested. Applicants request that the Examiner call the undersigned if clarification is needed on any matter within this Amendment, or if the Examiner believes a telephone interview would expedite the prosecution of the subject application to completion.

Respectfully submitted,

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